**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D. C. 20554**

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| In the Matter of | ) | |
| | ) | |
| SBC's and VarTec's Petitions for | ) | |
| Declaratory Ruling Regarding the | ) | WC Docket No. 05-276 |
| Application of Access Charges | ) | |
| To IP-Transported Calls | ) | |

# REPLY COMMENTS OF BELLSOUTH


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## REPLY COMMENTS OF BELLSOUTH

BellSouth Corporation ("BellSouth"), on behalf of its affiliated companies, files this reply to comments filed in response to the *Public Notice* issued in this docket.[1] BellSouth supports the Petition of the SBC ILECs For a Declaratory Ruling[2] and opposes the Petition for Declaratory Ruling filed by VarTec Telecom, Inc.[3] In accordance with the record established here, the Commission should act immediately to clarify that under its rules, as interpreted in the *AT&T Order*,[4] access charges apply to the traffic described in the instant petitions and that the service providers described in the petitions are liable for these charges.

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1 *Pleading Cycle Established for SBC's and VarTec's Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls*, WC Docket No. 05-276, *Public Notice*, DA 05-2514 (rel. Sept. 26, 2005).

2 Petition of the SBC ILECs for a Declaratory Ruling, WC Docket No. 05-276 (filed Sept. 19, 2005) ("SBC Petition").

3 VarTec Petition for Declaratory Ruling, WC Docket No. 05-276 (filed Aug. 20, 2004) ("VarTec Petition").

4 *Petition for Declaratory Ruling that AT&T's Phone-to-Phone Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, *Order*, 19 FCC Rcd 7457 (2004) ("*AT&T Order*" or "*AT&T Declaratory Ruling*").

## INTRODUCTION AND SUMMARY

Parties opposing the SBC Petition make a number of claims that are easily refuted and that should not deter the Commission from granting the relief sought. PointOne erroneously contends that even on the facts alleged in the petition, its nominal status as a private provider of enhanced services renders it immune, for a number of fallacious reasons, from the assessment of access charges. All other parties opposing the SBC Petition seem to agree that, for the call flows in question, some entity has an obligation to pay access charges. Generally, these parties each assert that the only entity in the chain of multiple carriers on a PSTN-PSTN long distance call that can be held liable for terminating access charges is the "last" interexchange carrier ("IXC") that actually subscribes to a terminating local exchange carrier's ("LEC's") tariffed exchange access service. Of course, each party making this point contends that it does not occupy that position (PointOne contends that it is not even a "carrier") and that it is unlawful for the LEC to look to them for remittance of unpaid access charges owed under any circumstances.

These parties make much of the way tariffs and billing conventions are supposed to work in an ideal world in which all service providers participating in the carriage of a long distance call from one PSTN end user to another PSTN end user agree that the traffic they carry is subject to access charges and conform their behavior accordingly. They ignore the reality that, especially since the advent of VoIP services, service providers of all stripes can and do seek to disguise the real nature of the traffic they are involved with in order to avoid access charges through a variety of stratagems and definitional legerdemain, many of which they contend to be

countenanced by the Commission.[5] They offer no workable solution to the specific and essential problem raised by SBC ILECs – in a PSTN-PSTN long distance multiple carrier call flow in which access charges clearly apply, to whom may the terminating ILEC look for payment of those charges under two circumstances: first, when the last non-CLEC entity in the PSTN-PSTN long distance multiple carrier chain (a) claims not to be an IXC, but rather an "enhanced service provider" ("ESP") that is immune to access charges; and (b) does not order exchange access service from the terminating LEC's tariff, but rather routes the interexchange traffic it delivers instead through a CLEC's facilities which in turn deliver the traffic for ultimate termination by the ILEC to the called party over local interconnection trunks that are not designed to measure and rate traffic to assess the appropriate access charge; and second, when the IXC that sends its end user customer's long distance traffic to the foregoing non-CLEC entity for ultimate delivery to the parties who are called by the IXC's subscribers asserts that it is not liable for access charges because it has no contractual privity with the terminating LEC.

Indeed, far from offering a meaningful solution, opposing parties tender absolutist advocacy that sheds no light on how the Commission should specifically address the situation presented in the SBC Petition. CLECs resent the "implication" that their role in these traffic routing arrangements may be improper and demand clarification that they are never subject to access charges in these (or any) circumstances. EarthLink and Level 3 haughtily decry ILEC "self-help" when ILECs seek payment of the access charges that are clearly due them from someone when everyone in the multiple carrier chain admits that somebody owes the money but each denies liability for one reason or another. Broadwing claims that if everyone followed the

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[5] Comments of ACS of Alaska, Inc., ACS of Fairbanks, Inc., ACS of the Northland, Inc. and ACS of Anchorage, Inc. ("ACS") at 3-5; Alltel Comments at 4-5; CenturyTel Comments at 5; Cinergy Communications Company ("Cinergy") Comments at 3.

existing rules and industry practices, there wouldn't be a problem. This head in the sand approach ignores the essential problem – LEC tariffs and MECAB policies don't help LECS who should be "cooperating in terminating access traffic from an IXC" when the IXC claims that it isn't an IXC and when neither the CLEC or the entity delivering interexchange traffic to the CLEC treat or acknowledge the traffic as interexchange traffic subject to access charges. In short, LECs can't cooperate in the termination of access traffic from an IXC when the traffic has been disguised.

The Commission should not hesitate to grant SBC ILECs' petition. Under the circumstances set forth in the SBC Petition, and for the reasons set forth in BellSouth's Comments and other comments supporting the petition (chief among them, the direct applicability of the *AT&T Declaratory Ruling* to the facts presented here), carriers cannot avoid the lawful payment of access charges by pointing their fingers at someone else or by using IP technology. In affirming the applicability of its *AT&T Declaratory Ruling* to the facts presented by the instant petitions, and in granting the relief sought by SBC, the Commission should make it clear that PointOne and carriers like it act as IXCs and are therefore subject to access charges, notwithstanding their use of IP technology to transport interexchange calls between carriers. It should unequivocally reject PointOne's contention that it is at all times and in all circumstances acting as an ESP entitled to exemption from the payment of access charges under the ESP exemption. And where multiple carriers deny access charge liability when access charges are owed for whatever reason, the Commission should provide workable guidance for a terminating LEC to seek recovery of charges from all such carriers, as suggested by Qwest.

Finally, to the extent that the Commission decides to address the issue concurrent with the specific relief sought by SBC, the Commission should, as BellSouth demonstrated, deny

VarTec's request for a ruling that it is entitled to be paid for transiting traffic under the circumstances described in its petition.[6] ACS, Alltel, Frontier Communications, the ITTA Joint Commenters, SBC and USTelecom all demonstrate the lack of merit in and, indeed, the duplicitous motives behind, such a request, which are not supported by a single commenter in this proceeding.

## I. THE AT&T DECLARATORY RULING APPLIES TO AND RESOLVES THIS CASE

As BellSouth and others demonstrate, the *AT&T Order* and other preexisting Commission precedent control the outcome of the SBC Petition and the first two issues presented in the VarTec Petition.[7] When an interexchange telephone call is initiated over the PSTN by an end user who dials one plus (1+) the called party's number, and when that call, once it reaches an IXC's network, is subsequently "converted" from its original Time Division Multiplexing ("TDM") format into IP format, and then converted back from the IP format into the original TDM format prior to delivery to the called party by way of a LEC's network, the service being provided to the end user who initiated the call is an interexchange telecommunications service subject to access charges. It does not matter whether:

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[6] BellSouth Comments at 11-12. SBC Communications Inc. ("SBC") argues that the Commission should not address Vartec's claim for "transiting" compensation, which in any event is without merit. SBC Comments at 17-22.

[7] BellSouth Comments at 4-7; Alltel Comments at 7-9; CenturyTel Comments at 2-5; Cincinnati Bell Comments at 3-7; Cinergy Comments at 3; Frontier Comments at 2-5; John Staurulakis, Inc. ("JSI") Comments at 3-4; Independent Telephone and Telecommunications Alliance, National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, United States Telecom Association and the Western Telecommunications Alliance ("Associations") Comments at 4; National Association of State Utility Consumer Advocates ("NASUCA") Comments at 4-5; Qwest Communications International Inc. ("Qwest") Comments at 5-8, 17; SBC Comments at 9-11; United States Telecom Association ("USTA") Comments at 4; Verizon Comments at 2-3.

- one or more entities are involved in the interexchange carriage of the call before it is delivered to the terminating LEC;

- one or more entities engaged in the interexchange carriage of the call consider themselves to be "wholesale" providers, or "retail providers," or "information service providers," or "telecommunications service providers," or "transmission providers," or "least cost routers;" or

- the technology used to transport the call utilizes Internet protocol technology.

Liability for access charges cannot be avoided by chaining multiple carriers on an interexchange call; nor can they be avoided when (i) a carrier uses IP technology when transporting the call; (ii) the call undergoes no net protocol conversion from end-to-end and no additional enhanced functionality is provided to end users; and (iii) the call is routed in a way to disguise the nature of the traffic and to avoid the appropriate rating and measurements. In these circumstances, self-styled ESPs are using the public switched network in the same way and for the same purposes as IXCs, and are not entitled to the existing exemption from the payment of the access charges that IXCs would be required to pay.[8] An IXC delivering its interexchange traffic to the ESP who denies its liability for payment of access charges is jointly and severally liable with the ESP for payment of those charges as users of ILEC switched access services under the Commission's constructive ordering doctrine[9] and principles of agency.[10] Furthermore, a CLEC that treats traffic delivered to an ILEC as local when it knows or should know that the traffic is really interexchange in nature should bear financial responsibility for such unreasonable conduct.[11]

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8 *Infra*, section II below.

9 SBC Comments at 11-13; Qwest Comments at 18.

10 BellSouth Comments at 8-11; Frontier Comments at 5-6.

11 EarthLink Comments at 7, n.17; ACS Comments at 4-5; Qwest Comments at 19-23.

In the *AT&T Order* the Commission ruled that IP-in-the-middle long distance calls – whether transported by a single provider or by multiple providers – are "telecommunications services" subject to access charges.[12] And although the *AT&T Order* dealt with a particular IP-enabled service, all of the essential facts present in that case are present in both the SBC and VarTec petitions:

- Customers place and receive interexchange calls with the same telephones they use for all other circuit-switched calls;
- The calls are routed over Feature Group D trunks, and the interexchange carrier pays originating interstate access charges to the calling party's LEC;
- Once the call gets to the interexchange network, the call is routed through a gateway where it is converted to IP format, and then transported over an Internet backbone;
- To get the call back to the called party's LEC, the traffic is changed from IP to TDM format and is terminated to the called party's LEC through local business lines, rather than Feature Group D trunks.

Attempts to distinguish the *AT&T Declaratory Ruling* are not availing.[13] Only two parties claim that the *AT&T Declaratory Ruling* is inapposite: Global Crossing claims that the *AT&T Declaratory Ruling* does not change the Commission's existing access charge rules, alter existing tariffs, or newly impose joint and several liability on multiple carriers,[14] while PointOne indefensibly argues that the "core holding" of *the AT&T Declaratory Ruling* "addressed a one-

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12 *AT&T Order*, 19 FCC Rcd at 7457, ¶ 1.

13 EarthLink does not argue that the *AT&T Order* does not apply to the facts presented by the VarTec and SBC Petitions, but requests that any application of that order in the ruling sought by SBC Petitioners be expressly limited to the types of services described in the petitions. EarthLink Comments at 5. Notwithstanding EarthLink's unwarranted characterization of legitimate ILEC collection efforts as illegal self help, this observation is reasonable and consistent with the Commission's approach to dealing with IP-related issues in advance of its long-awaited, and much needed, comprehensive ruling in the *IP-Enabled Services* proceeding.

14 GCI Comments at 10-16; PointOne Comments at 19-21.

provider transmission scenario, not the 'multi-provider' scenario at issue here" and in any event, applies only to IXC's, which PointOne claims it can never be.[15]

Both arguments are misplaced. Global Crossing is correct that the *AT&T Declaratory Ruling* didn't change existing law; however, it is incorrect in its interpretation of that existing law. Under the Commission's existing rules and precedent, which pre-dated the *AT&T Declaratory Ruling*, ESPS that use ILEC facilities in the same manner and for the same purposes as IXCs (i.e., when they function as a "terminating IXC" although they claim "ESP" status) are already subject to access charges and other IXCs that entered into the indirect rating arrangement with the intent to avoid access charges or enable others to avoid access charges, are already jointly and severally liable for the payment of those charges under the constructive ordering doctrine and principles of agency law. Thus the Commission unequivocally held in the *AT&T Order:*

> We note that all telecommunications services are subject to our existing rules regarding intercarrier compensation. Consequently, when a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN, the interexchange carrier is obligated to pay terminating access charges. *Our analysis in this order applies to services that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.* Thus our ruling here should not place AT&T at a competitive disadvantage. We are adopting this order to clarify the application of access charges to these specific services to remedy the current situation in which some carriers may be paying access charges for these services while others are not.[16]

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15 PointOne at 20; *id.* at 19-21.

16 *AT&T Order*, 19 FCC Rcd at 7470, ¶ 19 (emphasis added, citations omitted; critically, however, in footnote 81 of this paragraph, the Commission cited to the March 12, 2004 WilTel *ex parte* identified in BellSouth's Comments at 6, n.8, when it announced that its rule applies to multiple service providers as well as a single IXC). *See also id.* at 7458, ¶ 1.

PointOne claims that the only meaningful language in the foregoing holding is that "the interexchange carrier is obligated to pay access charges." It ignores the italicized, and critical language that follows: "our analysis in this order applies regardless of whether only one interexchange carrier uses IP transport [as was the case with AT&T's service] or instead multiple service providers are involved in providing IP transport [as is the case here: VarTec and PointOne are both involved in providing transport, and PointOne provides the IP transport]." The Commission's subsequent explanation is consistent with existing law and is also ignored by PointOne: "We are adopting this order to clarify the application of access charges to these specific services [IP-in-the-middle interexchange transport services] to remedy the current situation in which some carriers may be paying access charges for these services [e.g., non-IP enabled interexchange transport providers] while others [e.g., entities like PointOne] are not."

PointOne's only hope of avoiding the clear application of this analysis to its own conduct is to argue that it is not an interexchange carrier as that term is used in the *AT&T Declaratory Ruling*, a specious argument thoroughly refuted by the SBC Petitioners and unsuccessfully rebutted by PointOne. Point One is simply wrong; and as shown below, PointOne is subject to access charges under the present circumstances under existing law regardless of its status as a telecommunications or information service provider (although it is properly classified under the circumstances presented in the instant petitions as an interexchange carrier providing a telecommunications service) because it is using the public switched network in exactly the same way that competing IXCs are by delivering interexchange traffic that originated on the PSTN to LECs for termination on the PSTN to LEC customers. [17]

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[17] *See* Joint CLEC Comments at 4 (conceding that access charges may apply to CLECs if, on specific facts, the CLEC is operating as an IXC).

Finally, although Joint CLEC Commenters and Level 3 cite the *AT&T Declaratory Ruling* in attempts to limit their own potential joint and several liabilities for unpaid access charges when they operate as a LEC rather than as an IXC, this advocacy does not affect the Commission's analysis of the conduct of service providers like VarTec and PointOne.[18] Both commenters argue that the issues of whether traffic routing arrangements between interconnected LECs are proper or improper are resolved through reference to the interconnection agreements established between the carriers.[19] While these statements are generally correct, to the extent these commenters argue that CLECs *qua* CLECs can never be liable for access charges, Qwest correctly notes that CLECs could be liable to a terminating LEC for access charges if it is a direct and active participant in an unlawful scheme to avoid access charges through improper traffic diversion:

> Notably, the CLEC receiving the traffic could be liable if it is acting as an IXC and improperly terminating the traffic over local facilities, namely its interconnection trunking with the terminating LEC. However, even where the CLEC is not liable as an IXC, it can be liable if it has provided local facilities (*e.g.*, PRI/PRS services) to an entity improperly claiming to be offering enhanced services and it has not taken minimum, affirmative steps to prevent misuse of its local services when it becomes aware of such misuse. Just what steps a CLEC must take is the subject of the Grande Petition . . . .[20]

In the meantime, however, the comments filed in this proceeding demonstrate that the Commission should grant the relief requested in the SBC Petition, and deny the relief requested

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[18] *Id.* at 8-9 ("the Commission should limit itself to the question raised by SBC, namely whether wholesale transmission providers that are *not* CLECs that use IP to carry otherwise basic interexchange traffic that originates and terminates on the PSTN are acting as 'interexchange carriers' for purposes of Rule 69.5 and are accordingly subject to access charges.") (emphasis in original).

[19] Joint CLEC Comments at 13-14; Level 3 Communications, Inc. ("Level 3") Comments at 8-9.

[20] Qwest comments at 22-23.

in the VarTec Petition, consistent with its analysis in the *AT&T Declaratory Ruling*, by unequivocally confirming that under its rules access charges apply to IP-in-the-middle telephony services even though multiple service providers of any stripe may be involved in providing IP-enabled interexchange transport.

## II. POINTONE IS, ON THE FACTS PRESENTED, FUNCTIONING AS AN INTEREXCHANGE CARRIER AND IS THEREFORE SUBJECT TO ACCESS CHARGES

PointOne claims to be an "information service" provider. Even if it were, it wouldn't be entitled to an exemption from the payment of access charges for PSTN-PSTN long distance traffic that it receives from a traditional IXC, transports across exchanges, and causes to terminate to a LEC's end user customer, albeit through local interconnection facilities rather than FGD trunks. While it may be an information service provider for some or even most of the time, it relies on its self-definition for a blanket exemption from the rules and ignores its function in the call flow described in the SBC Petition. PointOne, in its own words, "carries traffic from a variety of carriers and service providers,"[21] and in doing so, "PointOne converts from TDM to IP (if necessary), process the IP packets across its network so that the enhanced features and functions can be accessed and used, and then routes the communication toward the desired endpoint, converting from IP to TDM (when necessary)."[22] As alleged by SBC Petitioners, the service that PointOne provides is "in fact transport service for interexchange traffic that

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[21] Point One Comments at 24. It is tempting to play PointOne's semantic game, and argue that PointOne has here explicitly conceded that it "carries" traffic, which therefore must necessarily make PointOne a "carrier" whenever it actually "carries" traffic, and which therefore makes PointOne a "common carrier" under the Communications Act by operation of law, because the only kind of carriers that there can be are common carriers. Point One Comments at 14. This is utter nonsense, of course, as demonstrated in the SBC Petition at 29-32.

[22] PointOne Comments at 27.

originates and terminates on the PSTN without a net protocol conversion."[23] And as Qwest put it, '[w]hen PointOne provides telecommunications services, it fits into the statutory definition, no matter what it might be classified as when engaged in other activities" and "a wholesale transmission provider that uses IP technology in a multi-carrier chain is exposed to liability on an equal plane with any other transmission provider when it comes to access charge liability."[24]

In any event, PointOne has failed to refute SBC's demonstration that wholesale transmission providers that happen to use IP technology are still interexchange carriers for the purposes of the Commission's access charge rules.[25] Carriers (or "providers," to use PointOne's term) engaged in long-haul transmission of ordinary long distance calls that begin and end on the PSTN function as interexchange carriers under the Commission's rules and are liable for the applicable tariffed access charges.[26] Even if PointOne were an information service provider, it is still subject to access charges to the extent it offers interexchange services in addition to enhanced services. It is not entitled to any exemption from access charge liability based on the way it is using LEC facilities and transporting PSTN-PSTN traffic as described in the SBC Petition. As the SBC Petition correctly notes, irrespective of any other services it may offer, when it provides long-haul transport of ordinary telephone calls that originate and terminate on the PSTN, it is providing an interexchange service and not an enhanced service.[27] Under the terms of the *AT&T Declaratory Ruling*, PointOne owes access charges on the traffic it sends to LECs for termination.

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23 Alltel Comments at 6.

24 Qwest Comments at 15.

25 SBC Petition at 17-24.

26 *Id.* at 18.

27 *Id.* at 27.

The ESP exemption does not apply to the instant facts. The ESP exemption only applies where ESPs "use incumbent LEC networks to receive calls from their customers."[28] In 1997 the Commission decided to maintain what it originally characterized as a "transitional" exemption in spite of evolved (but still largely pre-VoIP) information service technologies because it was still not clear to the Commission at that point in time that "ISPs use the public switched network in a manner analogous to IXCs."[29] The Commission explained in its subsequent brief on appeal of the issue to the Court of Appeals:

> Although the LEC services or facilities used by the ISPs may be similar to those used by some companies that pay per-minute access charges, the ISPs do not use them in the same way or the same purposes . . . [T]he ISP's use of the LEC facilities is analogous to the way another business subscriber uses a similarly-priced local business line to receive calls from customers who want to buy that subscriber's wares that are stored in another state and require shipment back to the customer's location.[30]

The Eighth Circuit and underlying that affirmation was its understanding that "the Commission's actions do not discriminate in favor of ISPs, which do not utilize LEC services and facilities in the same way or for the same purposes as other customers who are assessed per-minute interstate access charges."[31] As the Court observed:

> ISPs subscribe to LEC facilities in order to receive local calls from customers who want to access the ISP's data, which may or may not be stored in computers outside the state in which the call was placed. An IXC, in contrast, uses the LEC facilities as an element in an end-to-end long-distance call that the IXC sells as its own product to its own customers.[32]

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28 *Access Charge Reform, et al.*, CC Docket No. 96-262, *et al.*, *First Report and Order*, 12 FCC Rcd 15982, 16133, ¶ 343 (1997) (continuing the limited exemption established in 1983).

29 *Id.* ¶ 345.

30 Brief for the FCC at 75-76, *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1997) (No. 97-2618) ("FCC Br.").

31 *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d at 542 (8th Cir. 1998).

32 *Id.* n.9.

Relying on its earlier *CompTel* decision, the Court stated that where two different sets of carriers seek to use LEC networks services and facilities that might be "technologically identical," the services and facilities provided by the LEC are "distinct" if the carriers are making different uses of them.[33] And in explaining why it was permissible for the FCC to extend the transitional ESP exemption but not the transitional access charge rules favoring smaller long distance carriers over larger long distance carriers, the Eighth Circuit observed that in the latter case, the FCC was imposing inconsistent, allegedly transitional rates on entities (large and small IXCs) that essentially provided identical services, while in the former:

> the FCC is exempting from interstate access charges ISPs that, according to the FCC, utilize the local networks differently than do IXCs. The FCC has justified its decision to exempt ISPs from access charges paid by IXCs by noting the distinction between the manner in which these separate entities utilize the local networks.[34]

It is manifestly clear that the ESP exemption was never meant by this Commission or by the appellate courts to permit discriminatory access charge treatment among entities that use the PSTN in identical ways. As Alltel puts it, "[t]he ESP Exemption was never intended to provide a competitive advantage to certain carriers providing identical transport service to those of IXCs."[35]

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33 *Id.*, quoting 117 F.3d at 1073.

34 *Id.* at 544.

35 Alltel Comments at 11; *see also* general discussion of history and scope of ESP exemption at 9-12; Qwest Comments at 14-15; Verizon Comments at 3-6 (also demonstrating that any protocol conversion or use packet switching transmission protocols that may occur in the context of PointOne's service does not bring it within the scope of the ESP exemption).

## III. VARTEC IS NOT ENTITLED TO TRANSITING COMPENSATION

Finally, to the extent that the Commission decides to address the issue concurrent with the specific relief sought by SBC, the Commission should, as BellSouth demonstrated, deny VarTec's request for a ruling that it is entitled to be paid for transiting traffic under the circumstances described in its petition.[36] ACS, Alltel, Frontier Communications, the ITTA Joint Commenters, SBC and USTelecom all demonstrate the lack of merit in and, indeed, the duplicitous motives behind, such a request, which are otherwise not supported by a single commenter in this proceeding.[37]

## CONCLUSION

Broadwing and Level 3 assert that SBC has over-simplified the access charge problem and overstated the remedy, at the risk of violating existing rules and undermining the ESP exemption.[38] Rather, it is Broadwing, Level 3, and others who are guilty of advocacy that over-states existing law, ignores the real world and existing rules violations, and expands the limited ESP "exemption" to an unwarranted, universal ESP "exclusion." The Commission should reject the arguments of Broadwing, Level 3, EarthLink, Global Crossing, Joint CLEC Commenters, PacWest, PointOne, UTEX and WilTel offered in opposition to the specific relief sought by the SBC Petitioners, and confirm that under its existing rules, as applied in the *AT&T Order*, access charges apply to the traffic described in the SBC and VarTec petitions and that the service providers described in the petitions are liable for these charges.

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[36] BellSouth Comments at 11-12. SBC argues that the Commission should not address Vartec's claim for "transiting" compensation, which in any event is without merit. SBC Comments at 17-22.

[37] ACS Comments at 6; Alltel Comments at 12-14; Frontier Comments at 8-10; Associations' Comments at 6-9; SBC Comments at 17-22; USTA Comments at 9-10.

[38] Level 3 Comments, Section II at 6-14; Broadwing Comments at 1 (stating that has reviewed and concurs with the legal analysis of Section II of Level 3's comments).

Respectfully submitted,

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Date: December 12, 2005

## CERTIFICATE OF SERVICE

I do hereby certify that I have this 12th day of December 2005 served the following with a copy of the foregoing **REPLY COMMENTS OF BELLSOUTH** via electronic filing and/or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

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